

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

IT(TP)A No.1466/Bang/2024
Assessment year : 2015-16

MetricStream Infotech (India) Pvt. Ltd., # 23 & 24, AMR Tech Park 3B, IndiQube Building, 1 <sup>st</sup> Floor, Hongasandra Village, Begur Hobli, Hosur Road, Bengaluru – 560 068. <b>PAN: AACCM 4991K</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Padamchand Khincha, CA
Respondent by	:	Dr. Divya K J, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11-12-2025
Date of Pronouncement	:	13-02-2026

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by MetricStream Infotech (India) Pvt. Ltd. (The assessee/appellant) for the assessment year 2015-16 against the final assessment order dated 30.06.2024 passed u/s. 144 r.w.s. 260 r.w.s. 144B of the Income Tax Act, 1961 [the Act] by the Assessment Unit of the Income Tax Department.
2. The assessee has raised the following grounds of appeal :-

**“GENERAL GROUND**

1. The Orders passed by learned Deputy Commissioner of Income Tax, Circle — 4(1)(1), Bangalore (hereinafter referred as "AO" for brevity), learned Deputy Commissioner of Income Tax (Transfer Pricing Officer) — 2(1)(1), Bangalore (hereinafter referred as "TPO" for brevity) and the Honourable DRP-2, Bengaluru ("AO", "TPO" and DRP collectively referred as "lower authorities" for brevity) are bad in law and liable to be quashed.

**GROUND RELATING TO LIMITATION PERIOD**

2. The Draft Assessment Order dated 17.08.2023 and consequential final assessment order dated 30.06.2024 passed by the learned AO are beyond the time limit prescribed for completion of fresh assessment proceedings as per provisions of Section 153(4) r.w.s 153(3) of the Act and therefore, orders are bad in law and liable to be quashed.

**GROUNDS RELATING TO TP ADJUSTMENT IN SOFTWARE DEVELOPMENT SEGMENT**

3. The learned TPO/AO has erred in making transfer pricing adjustment of Rs. 3,92,84,444/- towards international transactions in the software development segment.
4. The lower authorities have erred in:
  - (i) The lower income tax authorities have erred in adopting Rheel Software Pvt Ltd as a comparable despite it being functionally different, having insufficient information and having fluctuating margins.
  - (ii) The lower authorities have erred in including Sasken Communication Technologies Ltd as a comparable even though it fails upper turnover filter of Rs.200 crores.
  - (iii) Rejecting the following comparables selected/proposed by the Appellant for unjustified reasons:
    - Sankhya Infotech Private Limited
    - Athena Global Technologies Private Limited
    - Maveric Systems Limited.

- (iv) Erred in incorrectly computing the operating margin of the following comparables:
- Cigniti Technologies Ltd;
  - CG-VAK Software & Exports Ltd;
  - E-Zest Solutions Ltd;
5. The lower authorities have erred in not granting working capital adjustment.

**GROUND RELATING TO TP ADJUSTMENT IN MARKETING SUPPORT SEGMENT**

6. The learned AO has erred in making transfer pricing adjustment of Rs. 4,21,97,920/- towards international transactions in the marketing support segment.
7. The lower authorities have erred in selecting ICC International Agencies Ltd (Segmental) as a comparable despite it being functionally different.
8. The lower authorities have erred in adopting Platinum Advertising Pvt. Ltd as comparable even though it is not comparable in respect of functions performed, risks assumed, assets utilized, size, turnover, RPT filter, despite having unusual business circumstances or high margins, etc.
9. The learned TPO have erred in rejecting Priya International Limited (Segmental) as a comparable despite directions of DRP for inclusion and applying new filter for rejection, which was not applied earlier.
10. The lower authorities have erred in computing incorrect operating margins of the following comparables:
- i. Kestone Integrated Marketing Services Pvt Ltd and
  - ii. ICC International Agencies Ltd. (Seg).
11. The lower authorities have erred in not granting working capital adjustment.

**GROUND RELATING TO NOTIONAL INTEREST ON TRADE RECEIVABLES**

12. The lower authorities erred in:

- i) Not appreciating that the receivable from AE is not a separate international transaction, from the transaction of provision of services from which it is arising; and
- ii) Not appreciating that under TNMM, working capital adjustment subsumes receivables/payables and separate adjustment for notional interest on receivables is not required.

13. Without prejudice to above, the lower authorities have erred in:

- i) Adopting 6 months LIBOR at 4.3807% as arm's length rate. The rate adopted is incorrect and excessive;
- ii) Adopting mark-up of 400 basis point without providing any basis. The mark-up adopted is excessive.
- iii) Not adopting only LIBOR as arm's length interest rate;
- iv) Adopting 60 days as reasonable credit period without considering any comparables. The credit period adopted is on lower side.

**GROUND RELATING TO INTEREST U/S 234B**

14. The lower authorities have erred in levying interest of Rs. 3,99,08,022/- u/s 234B. In the facts and in the circumstances of the case, interest under section 234B is not leviable. The Appellant denies its liability to pay interest under section 234B of the Act.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.”

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

3. The brief history of the case are that the assessee company filed its original return of income for the impugned assessment year on

31.3.2016 declaring total income of ₹ 327,315,740/-. The return was picked up for scrutiny and because of the international transactions, reference was made to the learned transfer pricing officer to determine arm's-length price [ALP] of the international transactions. The order u/s. 92 CA of the Act was passed on 26.10.2018 proposing an adjustment of Rs.27,73,44,760 on account of international transaction. It resulted into a draft assessment order dated 29/11/2018.

4. The assessee preferred objection before the Id. DRP, who issued directions u/s. 144C(5) on 20.8.2019 and accordingly TP adjustment of Rs. 27,73,44,760 was scaled down to Rs.22,55,50,186. . Based on this the order giving effect to the direction of the DRP was passed on 25/9/2019 wherein the transfer pricing adjustments were made to the extent of ₹ 220,283,261/-. Final assessment order was passed under section 143 (3) read with section 144C of the act on 27/9/2019 wherein the total income of the assessee was assessed at ₹ 553,736,358/-. The final assessment order was passed u/s. 143(3) of the Act.
5. The assessee challenged the same before the Tribunal who passed an order dated 24.4.2020 allowing the argument of the assessee and directed the AO to pass an order. Pursuant to that, the AO made a fresh reference on 7.10.2020 to the TPO, who passed Order Giving Effect to the order of the Tribunal on 29.9.2022 whereby the adjustment was reduced to Rs.14,13,00,714. Pursuant to that the assessment order was passed on 29.3.2023.

6. The assessee challenged the same before the Hon'ble High Court of Karnataka challenging the assessment order that it was passed without issuing the draft order. The Hon'ble Karnataka High Court vide its order dated 13.7.2023 directed the AO to redo the procedure post the order of the Transfer Pricing Officer as per procedure u/s. 144C of the Act by passing a draft assessment order as the order of the TPO resulted into variation prejudicial to the interest of the assessee. Accordingly, the AO passed the draft assessment order on 17.8.2023. The assessee filed objections before the Id. DRP and the Id. DRP issued directions on 20.5.2024, according to which the total adjustment was restricted to Rs.8,43,02,549. Based on this, the assessment order was passed u/s. 144 r.w.s. 260 r.w.s. 144B of the Act on 30.6.2024. The same is under challenge before us.
7. The Id. AR, Shri Padam Chand Khincha, CA, vehemently submitted that the impugned assessment order is barred by limitation. He put before us the several timelines and submitted that when the order of the ITAT was passed on 24.2.2020, due date for passing of an order u/s. 153(3) of the Act was 31.3.2022 which was extended in view of section 153(4) upto 31.3.2023. The TP Order was passed on 29.9.2022 and final assessment order was passed on 29.3.2023. The Hon'ble High Court passed the order on 30.7.2023, post-direction of the Hon'ble High Court, the draft assessment order was passed on 17.8.2023 and final assessment order which is under challenge was passed on 30.6.2024. He submits that when the ITAT has set aside the matter to the TPO, second reference by the AO is not warranted and therefore

extension of 12 months as per section 153(4) of the Act is not applicable. He relied upon the decision of the Hon'ble Delhi High Court in the case of NDTV v. DRP, 465 ITR 687. He submits that even otherwise such extended time expires on 31.3.2023. He submits that the final assessment order was passed on 29.3.2023. The Hon'ble High Court has set aside the order as the same was in violation of section 144C of the Act and thus effectively there is no order before 31.3.2023. He referred to the decision of the Hon'ble High Court and submitted that order is only on the aspect of procedure not followed by the AO. He submits that the draft assessment order passed on 27.8.2023, final assessment order passed on 30.6.2024 are beyond time limit prescribed u/s. 153(3) of the Act and barred by limitation. Accordingly, he submits that the impugned assessment order is barred by limitation and therefore liable to be quashed.

8. The Id AR referred to provisions of section 153 (6) of the act and submitted that where there is finding or a direction by ITAT then on or before the expiry of twelve months from the date of receipt of the order should be completed. In this case the order of the ITAT was passed on 24/04/2020. Therefore, the time limit has ended on 31/3/2022. The Id AO passed the final assessment order on 29/3/2023. This order was challenged before the Honourable High court which held that such order is in violation of provision of section 144C of the Act, directed the Id AO to pass the Draft assessment order. Such order was passed on 17/8/2023 and final assessment order was passed on 30/6/2024. Thus, the order is barred by Limitation. He further referred

to the Order of the Honourable High court which did not grant the time limit extension to the Id AO nor was it prayed before court by the Revenue. Thus, the order is barred by limitation.

9. The Id. CIT(DR), Dr. Divya K J, submitted as under:-

1. In the instant case, the Hon'ble ITAT vide order in IT(TP)A No. 2347/Bang/2019 dated 24.04.2020 has set aside various issues related to transfer pricing adjustments vide para no. 14.1.4, 14.2.03, 14.4.2, 15.1, 16.3.2, 16.4 and 17.09. It is to be noted that the Hon'ble ITAT has set aside the issues to the file of the TPO but the ITAT order is marked to the PCIT/Assessing Officer who are the respondents for any case. Hence after receipt of the Hon'ble ITAT order, the AO has made a reference to the TPO on 7/10/2020 for undertaking action as per the directions of the Hon'ble ITAT. This has been mentioned on Page 3 of the assessment order passes u/s 144 r.w.s 260. R.w.s 144B of the Act dated 30/06/2024.

2. Section 153(3) of the Act as amended by finance act 2020 is reproduced below;

*(3) Notwithstanding anything contained in sub-sections (1) <sup>14</sup>[, (IA)] and (2), an order of <sup>15</sup>fresh assessment <sup>16</sup>**[or fresh order under section 92CA, as the case may be,]** in pursuance of an order under <sup>17</sup>**[section 250 or]** section 254 or section 263 or section 264, setting aside or cancelling an assessment, <sup>16</sup>**[or an***

*order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under <sup>17</sup>[section 250 or] section 254 is received <sup>18</sup> by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the <sup>19</sup>[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :*

<sup>13</sup>**[Provided** that where the order under <sup>17</sup>**[section 250 or] section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 Or section 264 is passed by the <sup>19</sup>[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if the words "nine months", the words "twelve months" had been substituted.**

Section 153(4) reads:

*(4) Notwithstanding anything contained in <sup>21</sup>[sub-sections (1), (1A), (2), (3) and (3A)], where a reference under sub-section (1) of*

*section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said <sup>21</sup>[sub-sections (1), (1 A), (2), (3) and (3 A)], shall be extended by twelve months.*

***[parts of the sub-section made bold have been introduced as hereunder:***

***16—Inserted by FA 2022 w.e.f 1-4-2022***

***17—Inserted by FA(No.2)Act 2024 w.e.f 1-10-2024] -***

***Hence they are not pertinent for the current case of the assessee pertaining to AY 2015-2016. For this Assessment year, section 153(3) and 153(4) are to be considered (prior to amendment mentioned above).***

3. As per Section 153(3), time limit available is 12 months from the end of the financial year in which the order u/s 254 of Hon'ble ITAT is received. Further, as per Section 153(4), notwithstanding sub-section 3, the time limit for completion of assessment shall be extended by 12 months where reference u/s 92CA(1) is made.
4. In the instant case, order u/s 254 of Hon'ble ITAT was received in F.Y. 2020-21. Further, it is clear that various issues related to transfer pricing were set aside. Therefore, reference u/s 92CA (1) was a requirement in this case, and the same was made on 07.10.2020.
5. Therefore, for computation of time barring in this case, provisions of sub-section 3 and subsection 4 of Section 153 have to be applied together constructively. Time available as per sub-section 3 would be 12 months from the end of FY 2020-2021, i.e 12 months from 31.03.2021, which would be 31.03.2022. Further, additional 12 months would be added by virtue of sub-section 4 of Section 153.

Therefore, the time barring date for passing of final order in this case should be 31.03.2023. Final order in this case was passed on 29.03.2023. Therefore, the order was passed within the time as mentioned in the provisions of Sec.153 of the Act. All the orders have, therefore been passed in accordance with provisions of sub-section (3) and (4) of the Act, 1961 as amended by Finance Act, 2020.

6. Even if for arguments sake, the submission of the Ld.Counsel for the assessee that sub-sections 5 and 6 of Sec.153 apply in this case, for the passing of the order pursuant to the directions of the Hon'ble High Court, is to be considered, then it is humbly submitted that the AO has passed the order well within the time limits mentioned.
7. Further the assessee has filed WP in Hon'ble HC against this order dated 29.03.2023. The Hon'ble High Court of Karnataka in Writ Petition no. 8816 of 2023 (T-IT) vide order **dated 13.07.2023** has held that ***"the Assessing officer to re-do the procedure post order of Transfer Pricing Officer after following the procedure u/s 144C of the Act including forwarding the draft of the proposed order of assessment as the proposed TPO's adjustment would amount to variation, prejudicial to the interest of assessee. Thereafter, further procedure u/s 144C of the Act, is required to be followed."***
8. Accordingly, following the directions of the Hon'ble Karnataka High Court, the draft Assessment order dated 17.08.2023 has been passed and consequently DRP has issued directions on 20.05.2024 and then the final Assessment Order dated 30.06.2024 was passed u/s 153(4) r.w.s. 153(3) of the Act by the Ld. AO which is well within time limit.
9. Therefore, it is submitted that there is no infirmity in passing of any order by the AO or the TPO, and all these orders have been passed in statutorily available time limit.

10. It is also humbly submitted that the Department has followed the directions of the Hon'ble Karnataka High Court and has passed the orders. There is no option for the department of not adhering to the directions of the Hon'ble High Court. Hence it is submitted that the orders passed in lieu of the directions of the High Court should be upheld.
11. The assessee, should have raised its grounds of appeal that the OGE to the ITAT Order has been time barred, before the hon'ble Karnataka High Court, which has not been done by the assessee. The assessee has only raised the issue of the TPO having not followed the provisions of Section 144C. Further the assessee could have also filed a clarificatory petition, if it was not satisfied by the order of the Hon'ble High Court. But the assessee has not done the above and is disputing the orders passed by the department subsequent to the order of the Hon'ble Karnataka High Court, which is not correct as per the provisions of the Law. The department is duty bound to follow the orders of the hon'ble High Court and it has been followed.
12. Further reliance is also placed on the order of the Kerala High Court in the case of Cool Minds Technologies Private Ltd in 175 Taxmann.com 916(2025) wherein the Hon'ble Court has held that the authorities should follow the directions of the High Court. Hence the Department has followed the directions of the High Court.
13. Based on all the above submissions, it is requested that the order of the TPO and the Assessing officer are well within the time limits as prescribed by the Income Tax Act, 1961 and needs to be upheld.

10. We have carefully considered the rival contentions and perused the timelines on which the various orders are passed. In this case the coordinate bench in ITA A No. 2347/Bangalore/2019 for assessment year 2015 – 16 pronounced in order on 24 April 2020 wherein the appeal filed by the assessee was allowed setting aside the comparable is back to the file of "the learned AO/TPO." The assessee filed miscellaneous application in MA No. 127/Bangalore/2020 which was disposed of on 4 December 2020 wherein paragraph No. 17.9 of the order was amended and once again the issue was restored to the file of the learned/AO/TPO. Thereafter the learned assessing officer issued a fresh reference to the Deputy Commissioner of income tax transfer pricing 2 (1) (1), Bangalore on 7 October 2020. Thus, it is apparent that the order of the coordinate bench was received by the learned assessing officer on that date AO made a reference to the TPO. The timeline prescribed under section 153 (6) of the act will start from apparently 12 months from 31 October 2020. Thus, the assessment order should have been passed on or before 31 October 2021. Such is the mandate of the provisions of section 153 (6) (i) of the act. The learned transfer pricing officer passed an order under section 92CA read with section 254 of the income tax act on 29 September 2022. The final assessment order was passed on 29th of March 2023. The assessee challenged the assessment order dated 29 March 2023 stating that the assessing officer should have passed a draft of the proposed order of assessment to the assessee and not the final assessment order. The honourable High Court in writ petition No. 8816 of 2023 dated 13 July

2023 and held that that the AO should have followed the procedure prescribed under section 144C of the act, thereby meaning that the assessing officer should have passed the draft assessment order. In the order of the honourable High Court the impugned assessment order dated 29 March 2023 was set-aside and the AO was directed to redo the procedure under section 144C of the act. Pursuant to that draft assessment order under section 144C (1) was passed on 17 August 2023 against which the direction of the learned dispute resolution panel were issued on 20th may 2024 and the order giving effect to the direction of the learned dispute resolution panel was passed by the transfer pricing officer on 10 June 2024 resulting into the final assessment order passed under section 144 read with section 260 read with section 144B of the act was passed on 30 June 2024.

11. Thus based on the above timeline it is apparent that the assessment order should have been passed from the order of the ITAT dated 24 April 2020 which was received by the assessing officer on 7 October 2020 (as on that date the assessing officer made on a reference to the transfer pricing Officer in remand proceedings), the final assessment order should have been passed on or before 31 October 2021. Even if we presume that the second reference made by the learned assessing officer to the learned transfer pricing officer on 7 October 2020 is a valid reference, though we do not subscribe to that view, the timeline would be extended by a further one year and it will end on 31 October 2022. The impugned assessment order was passed on 29 March 2023 is therefore barred by limitation.

12. In view of the above facts we quash the assessment order is barred by limitation. Allowed Ground No 2 of the Appeal, Other Grounds do not need any adjudication and hence, Infructuous, hence dismissed.
13. In the result appeal of the assessee is allowed holding that the assessment order passed by the learned assessing officer is beyond the limitation prescribed and therefore is quashed.
14. In the result appeal filed by the assessee is allowed.

Pronounced in the open court on this 13<sup>th</sup> day of February 2026.

Sd/-

( KESHAV DUBEY )  
JUDICIAL MEMBER

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, the 13<sup>th</sup> February 2026.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.